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Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

On June 22, 2006

TOWNSEND and TOWNSEND and CREW LLP

By:

*JoAnn Evangelista*  
JoAnn Evangelista

PATENT

Attorney Docket No.: 018563-003300US

Client Ref. No.: AT-00079

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

CHRISTOPHER THOMAS SEPE

Application No.: 09/621,716

Filed: July 24, 2000

For: DELIVERY INFORMATION  
SYSTEMS AND METHODS

Customer No.: 46718

Confirmation No. 6440

Examiner: MEINECKE DIAZ,  
SUSANNA M

Technology Center/Art Unit: 3623

**RESPONSE**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed January 11, 2006, Applicant respectfully requests that all rejections be withdrawn in view of the following comments.

All pending claims were rejected over U.S. Patent Publication 2002/0082865 to Bianco et al. in view of U.S. Patent Publication 2002/0077850 to McMenimen et al. Such rejections are respectfully traversed since neither of these references is available as prior art under 35 USC §102(e).

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As the Examiner is certainly aware, references relied on under 35 USC §103(a) must be available as prior art under an appropriate section of 35 USC §102. See MPEP §706.2(a). As both the Bianco and the McMenimen publications were filed after the filing date of the present application, neither of these publications qualify as prior art. Thus, Applicant respectfully submits that the present rejections must be withdrawn.

Applicant recognizes that each of these publications has a corresponding provisional application which was filed prior to the filing date of the present application. Applicant notes that the provisionals are quite different than the published applications. While Applicant concedes that the disclosures of these provisional applications might be relied on under certain circumstances, to do so the Examiner must point to relevant disclosure in the provisional text. Applicant further wishes to point out that while the provisional application underlying the McMenimen et al. publication was incorporated into that publication by reference, the provisional application underlying the Bianco publication does not appear to have been incorporated by reference. A word search of the publication fails to show an incorporation by reference. Thus, with respect to Bianco et al., the Examiner not only cannot rely on the provisional text as prior art, but must instead find teachings which appear both in the published Bianco application and in the provisional application.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

James M. Heslin  
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 650-326-2400  
Fax: 415-576-0300  
Attachments  
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PTO/SB/21 (09-04)

JPW 3623 \$

**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

6

Application Number

09/621,716

Filing Date

July 24, 2000

First Named Inventor

SEPE, CHRISTOPHER THOMAS

Art Unit

3623

Examiner Name

MEINECKE DIAZ, SUSANNA M

Attorney Docket Number

018563-003300US / AT-00079

**ENCLOSURES (Check all that apply)**☐

Fee Transmittal Form

☐

Fee Attached

☒

Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☒

Extension of Time Request

☐

Express Abandonment Request

☐

Information Disclosure Statement

☐

Drawing(s)

☐

Licensing-related Papers

☐

Petition

☐Petition to Convert to a  
Provisional Application☐Power of Attorney, Revocation  
Change of Correspondence Address☐

Terminal Disclaimer

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Request for Refund

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CD, Number of CD(s) \_\_\_\_\_

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After Allowance Communication to TC

☐Appeal Communication to Board  
of Appeals and Interferences☐Appeal Communication to TC  
(Appeal Notice, Brief, Reply Brief)☐

Proprietary Information

☐

Status Letter

☒Other Enclosure(s) (please identify  
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☐Certified Copy of Priority  
Document(s)☐Reply to Missing Parts/ Incomplete  
Application☐Reply to Missing Parts  
under 37 CFR 1.52 or 1.53

Remarks

The Commissioner is authorized to charge any additional fees to Deposit  
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Firm Name

Townsend and Townsend and Crew LLP

Signature

Printed name

James M. Heslin

Date

June 22, 2006

Reg. No.

29,541

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June 22, 2006